

Appeal from the decision of the Idaho State Office, Bureau of Land Management, declaring six placer mining claims null and void ab initio. I MC 63363 through I MC 63368.

Affirmed in part, reversed in part.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

2. Mining Claims: Location -- Mining Claims: Placer Claims  
No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

APPEARANCES: Clayton S. Hale, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Clayton S. Hale has appealed the decision of the Idaho State Office, Bureau of Land Management (BLM), dated December 9, 1981, declaring the Wonder #19 Extended, Wonder #19, Dicks Dike, Value, Extended Value, and Willis #1 placer mining claims, I MC 63363 through I MC 63368, null and void ab initio because the claims were "located in sections 9, 16, and 21, T. 11 N., R. 13 E., B.M., Custer County, Idaho, within the Sawtooth National Forest and Sawtooth National Recreation Area [SNRA]" on June 2, 1981, after

the land involved was withdrawn from mineral entry by the Act of August 22, 1972, 86 Stat. 612.

In his statement of reasons for appeal, appellant explains that he was awarded the mining claims in a court settlement against a Mr. Van Tassel. He indicates that he found out from the SNRA office that he would have to submit new filings to BLM because the previous owner had not taken care of the necessary filings pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). Thus, he located the claims in his own name and timely filed copies of his notice of location for the claims with BLM on August 17, 1981. He also had assessment work performed on the claims.

On November 2, 1981, the SNRA mineral examiner reported to BLM that the mining claims at issue were located within or partly within the SNRA and asked that BLM research the status of the claims and take appropriate action. The BLM decision on appeal resulted.

Section 314 of FLPMA requires the owner of an unpatented mining claim located on or before October 21, 1976, to file a copy of the official record of the notice of location and related documents for the claim within the 3-year period following October 21, 1976. The owner of a mining claim located after October 21, 1976, is required to record a copy of the notice of location for the claim with BLM within 90 days following the date of location and to file evidence of assessment work or a notice of intention to hold the claim on or before December 30 of each calendar year following the calendar year of recording. Failure to file timely such records conclusively constitutes abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976). See 43 CFR Subpart 3833.

Other than the information reported by appellant the case file before us provides no indication of the status of the mining claims as located by Mr. Van Tassel. If Mr. Van Tassel failed to properly record those claims and to file annually evidence of assessment work or notices of intention to hold the claims with BLM, they are considered abandoned and void under section 314 of FLPMA.

[1] As to appellant's relocations, though timely filed under FLPMA, we find the following. The Act of August 2, 1972, P.L. 92-400, 86 Stat. 612, established the SNRA in Idaho and, subject to valid existing rights, withdrew all Federal lands therein from all forms of location, entry, and patent under the mining laws of the United States. 86 Stat. 614. See 36 CFR 292.17. Therefore, mining claims located within the boundaries of the SNRA after August 2, 1972, are null and void ab initio. The notices of location for the Dicks Dike, Value, Extended Value, and Willis #1 mining claims indicate that they are located in secs. 9, 16, or 21, T. 11 N., R. 13 E., Boise meridian, as stated by BLM and since those sections are wholly within the boundaries of the SNRA, the mining claims are null and void ab initio. However, examination of the notices of location for the remaining two claims reveals that the Wonder #19 Extended claim is located in sec. 22 and the Wonder #19 claim is located partially in sec. 21 and partially in sec. 22. Only a small portion of sec. 22, T. 11 N., R. 13 E., Boise meridian, falls within the SNRA. Our review of the status plat and maps in the case file suggest that most, if

not all, of the Wonder #19 Extended claim is located outside the SNRA and that probably a small portion of the Wonder #19 claim in sec. 22 may also be outside the SNRA. As to those portions of these two claims which lie outside the SNRA, the BLM decision is incorrect.

[2] Our examination of the notices of location also reveals that all of the claims were located for more than 20 acres of land except the Dicks Dike claim. The law clearly provides that no placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Appellant is the sole identified locator for all the claims except the Wonder #19 Extended, which was located by appellant and DeLoy C. Hale for approximately 40 acres. Therefore, appellant's locations for the Wonder #19, Value, Extended Value, and Willis #1 must also be found void because of excess acreage.

In summary, we hold that all of appellant's claims are null and void ab initio except for the Wonder #19 Extended, to the extent that it is located outside the boundaries of the SNRA. That portion of the Wonder #19 Extended should be accepted for recordation. Silver Spot Metals, Inc., 51 IBLA 212 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Idaho State Office is affirmed in part and reversed in part.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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James L. Burski  
Administrative Judge

